

UNITED STATES OF AMERICA,
Complainant

VS.

NU LOOK CLEANERS OF
PEMBROKE PINES, INC.
Respondent.

8 U.S.C. §1324a Proceeding
Case No. 89100162

ORDER TO SHOW CAUSE WHY RESPONDENT
SHOULD NOT BE REQUIRED TO RETAIN
CERTAIN DOCUMENTS IN ITS
POSSESSION AND TAKE RELATED ACTION

A. Statement

1. The instant complaint, issued on March 29, 1989, and received by attorney Joel Stewart on April 10, 1989, alleges that in violation of 8 U.S.C. §1324a(a)(1)(A), respondent, after November 6, 1986, hired for employment in the United States Sherida Allen, knowing she was an alien not lawfully admitted for permanent residence or was not authorized by the Immigration and Nationality Act or the Attorney General to accept employment; or, alternatively, that in violation of 8 U.S.C. §1324a(a)(2), respondent, after November 6, 1986, continued to employ her in the United States knowing she was an alien not lawfully admitted for permanent residence or was not authorized by the Act or the Attorney General to accept employment; as to this alleged violation, the complaint requested by way of relief a cease-and-desist order and a civil penalty of \$1,000. The complaint further alleged that in violation of 8 U.S.C. §1324a(a)(1)(B), respondent, after November 6, 1986, failed to properly verify Mrs. Allen on a verification card. In the event of a finding of violation, the complaint requests by way of relief a cease-and-desist order. The foregoing allegations are denied in a letter dated May 1, 1989, on respondent's behalf by attorney Stewart, dated May 1, 1989, and received by me on May 2, 1989.

2. On December 27, 1990, counsel for Stewart, as counsel of record for Respondents, submitted "documents" returnable on January 30, 1991 (emphasis in original):

1. For all employees hired fo
and for Sherida Allen:
 - a) All payroll records, such
receipts, etc.
 - b) All time cards, sign in at

related document(s).

- c) All records relating to the following:
 - i) contributions for social security
 - ii) contributions for unemployment compensation
 - iii) federal income tax withholdings
- d) All applications for employment
- e) All W-2, W-4 forms or copies thereof.
- f) All original I-9 forms.

3. Over date of January 31, 1991, complainant filed a motion to compel/motion for sanctions, requesting, inter alia, an order requiring respondent to respond to complainant's request for production of documents within 10 days of receipt of such order; and (upon any failure by respondent to comply with the order to compel) a finding that "all information and documents requested and all matters contained within Complainant's Request . . . be taken as established adversely to Respondent" and (pursuant to 28 CFR §68.21(c) and Rule 37(b)(1)(C) of the Federal Rules of Civil Procedure) that such failure constitutes a default calling for the entry of a final order against respondent. On February 11, 1991, I issued an order to respondent (by means of service on Mr. Stewart) to show cause why the motion should not be granted. Failure to reply within 14 days (a date which I later extended, sua sponte, to 14 days after March 8, 1991) was to be deemed to constitute consent. No response has been received.

4. On March 8, 1991, in response to various letters from and filings by Mr. Stewart and complainant's counsel, I issued a document captioned "Order Denying Respondent's Motion to Recuse, Denying Respondent's Request for Attorney's Fees under EAJA, Reiterating Viability of Order Rejecting Notice of Withdrawal by Respondent's Counsel, and Granting Extension of Time to Respond to Complainant's Motion to Compel/Motion for Sanctions." In a document dated March 16, 1991, but not received by the Chief Administrative Hearing Officer until March 22, 1991, Mr. Stewart filed a request for administrative review of my March 8 order. My courtesy copy of this request did not reach me until the afternoon of Friday, March 22. By letter dated Monday, March 25, 1991, I advised the parties that I would defer ruling on complainant's January 31 motion to compel/motion for sanctions pending the disposition of respondent's request for administrative review. Also on March 25, in an order of which I did not receive a copy until March 26, the CAHO denied the request for administrative review on the ground that it was filed late. Mr. Stewart's request for reconsideration, dated March 28, 1991, was denied by the CAHO on April 2, 1991. On April 11, 1991, I received from Mr. Stewart's office a courtesy copy of the following document dated April 9, 1991:

United States Court of Appeals for the 11th Circuit
Nu Look Cleaners of Pembroke Pines, Inc.

v.

United States of America,
Immigration and Naturalization Service

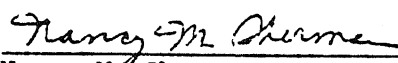
Nu Look Cleaners of Pembroke Pines, Inc., petitions the court for review of the order of Judge Nancy M. Sherman entered on March 8, 1991, and of the orders of Jack E. Perkins, Chief Administrative Hearing Officer, dated March 25, 1991, and April 2, 1991, denying request for administrative review of Nancy M. Sherman's order.

Joel Stewart, Attorney
For Petitioner

5. Pending disposition by the Court of Appeals of the petition to review filed by respondent herein, it would be inappropriate for me to rule on complainant's motion to compel/motion for sanctions. However, because this motion may be viable after that Court has acted, I am concerned about whether all the documents which are now, or are required by statute to be, in respondent's possession (or otherwise available to it), at material times up to the present, and which are encompassed by the request to produce, will remain available until the date of any determination that respondent is under a duty to honor that request. My concern is based largely on uncertainties as to respondent's present address and as to the identity of respondent's present officers. Thus, a letter to me from Mr. Stewart dated February 26, 1990, enclosed a letter bearing that same date from Mr. Alan Rubin stating that he "was" the secretary of "Nu-Look Cleaners, Inc., with corporate offices" at a Dixie Highway address in North Miami, Florida, that "The business entity known as Nu-Look Cleaners of Pembroke Pines, Inc., owned a business known as Nu Look One Hour Cleaners at 9075 Taft Street, Pembroke Pines, Florida, but their entire interest was sold on April 30, 1989," about 10 months before Mr. Rubin's letter; and that he had resigned his position as "Secretary of the Corporation" in August 1989 (about 6 months before his letter) and "am no longer in possession of any records pertaining to the same." Thereafter, Mr. Stewart (1) averred in a document filed with me and dated March 13, 1990, that in April 1989 respondent had sold its interest in "the business entity known as Nu Look Cleaners of Pembroke Pines, with offices at 9075 Taft Street," and that respondent is not presently doing business at that address; (2) averred in a document filed with me and dated March 13, 1990, that Mr. Rubin is no longer an employee or officer of respondent; (3) averred in a document filed with me and dated April 27, 1990, that as of that date (a) 9075 Taft Street was the address of Jeffrey Claverie, the president of Nu-Look Cleaners of Pembroke Pines, Inc., (b) that the corporate secretary was Mr. Rubin, at the Dixie Highway address; (c) that the Dixie Highway address was respondent's corporate address, and (d) that Mr. Rubin was its registered agent; and (4) forwarded to me an affidavit from Anthony Allen (Mrs. Allen's husband, who from time to time has acted as respondent's "agent" and has worked for respondent and/or related corporations), also dated April 27, 1990, that respondent's present address was "c/o Jeffrey Claverie" at an address in the West Indies. Moreover, a document filed with me by complainant over date of April 13, 1990, attaches a "Memorandum of Investigation" stating that on April 12, 1990, the Florida Department of State, Division of Corporate Records, advised the investigator by telephone that, inter alia, "Alan Rubin is registered agent, address is [the Dixie Highway address] Jeffrey Claverie is President and Treasurer, address is 9075 Taft Street . . ."

WHEREFORE, respondent is hereby ordered to show cause, within 10 days from the date of this order, why an order should not issue directing respondent to retain all of the documents encompassed by complainant's December 27, 1990, request for production, which could have been produced by respondent as of the date it receives the instant order. See U.S. v. Asay, 614 F.2d 655, 660 (9th Cir. 1980); In re D.I. Operating Co., 240 F.S. 672, 667-678 (Nev. 1965); U.S. v. Edmond, 355 F.S. 435, 437 (W.D.Ok., Civ. Div. 1972); U.S. v. Schoeberlein, 335 F.S. 1048, 1056-1057 (Md. 1971); McGarry v. Securities and Exchange Commission, 147 F.2d 389, 392-393 (10th Cir. 1945); U.S. v. Swingline Inc., 371 F.S. 37, 45 (E.D.N.Y. 1974); see also, Piambino v. Bestline Products, Inc., 645 F.S. 1210, 1215 (S.D. Fla. 1986); Phoenix Marine Enterprises, Inc. v. One (1) Hylas 46' Convertible Sportfisherman Hull #1, 681 F.S. 1523 (S.D. Fla. 1988), *affd.* 846 F.2d 753 (11th Cir. 1988). Failure to reply will be deemed to constitute consent. Failure to reply will also be deemed to constitute consent to any future action by me, in the drawing of any inferences from any failure to produce documents encompassed by the December 27, 1990, request to produce, in drawing no distinction between documents available at the time of any such failure to produce and documents available (or required by statute to be available) at the time respondent receives the instant show-cause order. **MOREOVER**, respondent is further ordered to show cause, within 10 days from the date of this order, why respondent should not be ordered to specify any documents encompassed by the December 27, 1990 request to produce which became unavailable to respondent before its receipt of this order, and the reasons why each became unavailable. Failure to reply will be deemed to constitute consent. Failure to reply will also be deemed to constitute consent to my assuming the availability to respondent of all documents encompassed by the December 27, 1990 request to produce and not so specified by respondent.

Dated: April 18, 1991.



Nancy M. Sherman
National Labor Relations Board
Division of Administrative Law Judges
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1550 Wilson Boulevard
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